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In re Application of
ADELERHOF, et al.
Application No.: 09/787,457
PCT No.: PCT/EP00/06816
Int. Filing Date: 17 July 2000
Priority Date: 22 July 1999
Attorney Docket No.: PHN 17,556
For: METHOD OF MANUFACTURING A
MAGNETIC TUNNEL JUNCTION
DEVICE

DECISION ON PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's "Petition to Withdraw Holding of Abandonment Based on Failure to Reply to Notice to File Missing Parts" filed in the United States Patent and Trademark Office (USPTO) on 06 February 2003.

BACKGROUND

On 17 July 2000, applicant filed international application PCT/EP00/06816, which claimed priority of an earlier application filed 22 July 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 01 February 2001. A Demand for international preliminary examination, in which the United States was elected, was not filed on prior to the expiration of nineteen months from the priority date. Accordingly, the twenty-month period for paying the basic national fee in the United States expired at midnight on 22 March 2001.

On 19 March 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an Information Disclosure Statement; a copy of the International Application as published and a signed combined declaration and power of attorney.

On 06 July 2001, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905). Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees. Box 3 of the Form PCT/DO/EO/905 was not checked detailing what item was missing.

On 02 December 2002, applicant was mailed a NOTIFICATION OF ABANDONMENT

(Form PCT/DO/EO/909) informing applicant that applicant had failed to respond to the NOTIFICATION OF MISSING REQUIREMENTS (Form PCT/DO/EO/905) mailed 06 July 2001 within the time period set therein and that above-identified application was abandoned as to the United States.

On 06 February 2003, applicant responded with the present petition.

DISCUSSION

A review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States were satisfied with the initial filing of 19 March 2001. As such, it is clear that the NOTIFICATION OF MISSING REQUIREMENTS (Form PCT/DO/EO/905) mailed 06 July 2001 was mailed in error.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **GRANTED**.

The "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" mailed on 06 July 2001 is hereby **VACATED**.

The application has an international filing date of **17 July 2000** under 35 U.S.C. 363 and will be given a date of **19 March 2001** under 35 U.S.C. 371(c).

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision.



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